IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.753 OF 1998

Shri Kishor Krishna Bhoite & Anr. ..Applicants.

V.s.

Gopichand Dagadu Bhoite. ..Respondent.

Mr.D.S.Mhaispurkar with Ms.V.S.Mhaispurkar for applicants.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 17, 2006.

JUDGMENT:

1. Inspite of service none appears for respondent No.1(b), who is the sole surviving respondent in this revision. This revision application is directed against the Judgment and order passed by the First Additional Principal Judge, City Civil Court, Mumbai dated April 30, 1998 in Short Cause Suit No.4750 of 1996. The operative order which is subject matter of challenge in this matter reads thus:

"**ORDER**

i) Property of the Defendants be attached in accordance with provisions of Order 39 Rule 2A of C.P.C.

ii) Defendants are directed to restore possession of the suit premises to the plaintiff forthwith.

This Order will be in addition to the Order passed in N/m No.4598/96.

Defendants in one set to pay costs of Rs.1000/- of this n/m to the plaintiff.

Contempt n/m No.1197 dated 6.3.97 disposed of in above terms. The suit for directions adjd. To 3.8.98.

Miss Mhaispurkar, Ld.Advocate h/f Mr. Patno seeks stay of operation of this order passed on N/m No.1197/97 to enable the Defendants to prefer an appeal. Since the order is appellable, the request granted. Operation of this order is stayed till 20.7.98."

2. The Lower Court by the impugned order allowed the Notice of Motion taken out by the original plaintiff in terms of provision of Order 39 Rule (2A) of C.P.Code on finding that the plaintiff was in possession of the suit property on 2nd February, 1997, on which date inspite of ad-interim order operating in favour of the plaintiff dated 4th September, 1996 the appellant caused to dispossess the plaintiff. What is relevant to notice in the present proceeding is that the formal Notice of Motion taken out by the plaintiff being Notice of Motion No.4598 of 1996, Ad-interim relief was granted on 4th September, 1996. The said Notice of Motion came to be made absolute by separate order on the same date, on which impugned order came to be passed. In the said decision, view taken in the present Notice of Motion under order 39 rule 2(a) is essentially founded on the finding recorded by the Trial Court while deciding the Notice of Motion No.4598 of 1996, wherein it has been found that the plaintiff was in possession of the suit premises. It is seen from the record that the appellant being aggrieved by the decision on the said Notice of Motion filed Appeal From Order before this court in which ad-interim stay was granted in favour of the appellant. In so far as present proceeding is concerned, even in this proceeding the lower Court itself granted stay of dispossession as noted in the operative

order. In that sense, the factum of possession of the suit property on the date of passing of the order will have to be answered in favour of the appellant. Unfortunately during pendency of these two proceedings before the Court, the plaintiff died on 12th August, 1999, namely, Appeal from order and Civil Revision application. It is further noticed that the suit also came to be dismissed on 11th December, 2000. There is nothing to indicate, atleast to the knowledge of the appellant that the suit has been restored to the file and the earlier interlocutory orders passed in favour of the plaintiff have been revived. With the dismissal of the suit it is well settled that orders passed under provision of order 39 will come to an end and will be revived only on restoration of suit. That has not happened in the present case. The Appeal from Order preferred by the applicant against the order passed in Notice of Motion No.4598 of 1996, I am informed has been disposed of by this court as the suit itself is dismissed and nothing survived for consideration in that appeal. As mentioned earlier, with the dismissal of the suit all interlocutory orders passed in the suit under provisions of Order 39 will come to an end and will be revived only if the suit is restored. Thus understood, nothing survives for consideration even in the present revision application. The same deserves to be disposed of accordingly.